

2006

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الشرط المعدل للمسؤولية العقدية
في القانون المدني المصري

إعداد
احمد سليم فريز نصره

نوقشت هذه الأطروحة بتاريخ: 2006/1/22 وأجيزت

أعضاء لجنة المناقشة

1- الدكتور غسان عمر خالد (مشرقا ورئيسا)

2- الدكتور أنور أبو عيشة (عضوا)

3- الدكتور علي السرطاوي (عضوا)

التوقيع



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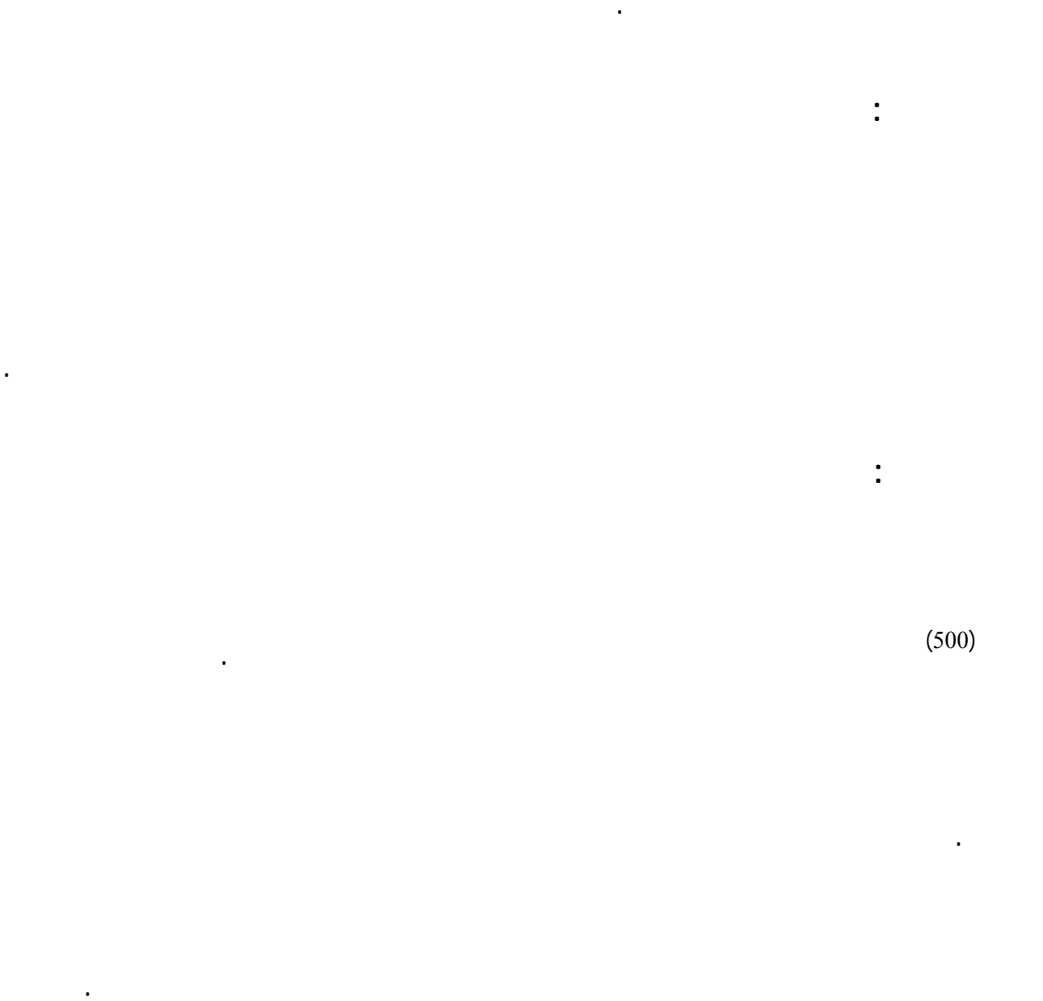
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**An-Najah National University
Faculty of Graduate Studies**

**Amending Condition of Contractual Responsibility
in the Egyptian Civil Law**

**Prepared by
Ahmed Saleem Fariz Al-Nasrah**

**Supervisor
Dr. Gassan Khaled**

**Submitted in Partial Fulfillment of the Requirements for the Degree of
Master of Private Law, Faculty of Graduate Studies, at An-Najah
National University, Nablus, Palestine.**

2006

**Amending Condition of Contractual Responsibility
in the Egyptian Civil Law**

**By
Ahmed Saleem Fariz Al-Nasrah
Supervisor
Dr. Gassan Khaled**

Abstract

This study examined the amending conditions in the contractual responsibility. In an introductory chapter, several issues related to this study were raised. One was the pillars of contractual and inadequate responsibility. The focus was on the pillar of error. It was explained that personal responsibility of the moneylender (creditor) extends to his responsibility for the errors of his/her followers and the act of doing the thing. A comparison was held between the two responsibilities. The issues of combination and choice between the two responsibilities were presented. It was found that considering the choice between the two responsibilities would lead to the lack of order of the two exempting and mollifying conditions of the impacts of the two responsibilities. A definition of these two conditions was presented and so was their scope. It was found that the idea of amendment in the responsibility is blemished with ambiguity by same law expounders. The researcher distinguished it from compensation agreement system and responsibility insurance. Then the researcher presented the effects of conditions on the persons. He explained what could be considered an exception in these effects and showed the partial and total impact of the invalidity of these conditions on the contract, thus rendering the application of the general rule in the lessening of contracts.

Chapter one was devoted to the exempting condition from responsibility. In this context, the researcher presented the fiqh (Islamic Law) position towards this condition. He also presented the position of the

Egyptian law and court of justice. It was found that the Egyptian civil law has allowed explicitly this condition but introduced two exceptions to it. One exception is serious error; the other is the error of the other. The researcher criticized this position because the creditor's responsibility in this case is a personal responsibility. Further, the Egyptian civil law has failed to put rules or sufficient restrictions on this condition. The researcher suggested taking a number of these rules, derived from fiqh and court of justice and others derived from some special applications

These restrictions don't allow this condition if it poses danger to man's safety. They also don't allow this condition if it has to do with a key commitment in the contract. In addition, it was necessary for the condition to be written; otherwise, it would be related to the relationship between the consumer and the merchant. It shouldn't be stated in the submissive contract. The researcher found that despite allowing this condition as a general rule, several applications were cited and considered this condition devoid. The researcher concluded that this condition would lead to the lack of responsibility of the creditor although he would be originally responsible pursuant to the general rules. He has to transfer the burden of evidence, in the case of cheating and serious error.

Chapter two was devoted to the mollifying condition. The researcher noticed that this condition had several versions. He, however, limited them to the two general versions. One is the mollifying cases of commitment. Added to them was a special version pertinent to the condition which dictates that the period of course of the time be shortened. The researcher, in this context, found that the first and second versions would be allowed. The third version, however, would not be allowed except in narrow

situations. Of the mollifying condition versions, the version that would refer to the sum of compensation was ruled out. It was not considered a mollifying condition of responsibility. Rather it was a compensation: either agreement or legal. Concerning the partial exemption from obligation or commitment, it was attached to the provision of exempting condition because there was no difference between them. What applies to most of the mollifying condition provisions apply also to the exempting condition given the same cause most of the time.

In chapter three, the researcher dealt with the stiff condition in responsibility. He presented the condition which holds the moneylender the foreign cause. He explained its notion, what it includes and showed that it has had two faces. The first is included in the concept of guarantees. It is considered a commitment in its accurate meaning. The second remains within the framework of responsibility. Every adaptation necessitates different effects. They were all explained in the context of the research. The researcher presented the effects of this condition on the burden of evidence and money lender's responsibility. He also explained the exceptions to it. He also dealt with the condition of toughening the evaluation of the moneylender's conduct and explained its versions and its impact of evidence and moneylender's responsibility. He also presented several applications for the stiff condition in responsibility in several contracts. In addition, he presented the restrictions stated in the stiff condition in responsibility: writing, clarity, physical safety of men, non-violation of general order, and good intention and non-violation of the condition of justice.

In the conclusion, the researcher presented general conclusions. Details pertinent to applications of conditions, however, were not all presented. The suggestions were also restricted to the wording of a general text which has to be included in the civil law in addition to another text pertinent to the permission of choice between the two responsibilities.